



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2022-0976; FRL-10788-01-R5]

Air Plan Approval; Michigan; Conditional Approval of the Detroit Sulfur Dioxide Nonattainment Area Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to conditionally approve the State Implementation Plan (SIP) revision submitted by Michigan on December 20, 2022, and supplemented on February 21, 2023, which amends a SIP submission previously submitted to EPA on May 31, 2016 and June 30, 2016, for attaining the 1-hour sulfur dioxide (SO₂) primary national ambient air quality standard (NAAQS) for the Detroit SO₂ nonattainment area. If this action is finalized, EPA will propose to convert the conditional approval of the SIP revision to a full approval upon Michigan timely meeting its commitment to submit the issued permits.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2022-0976 at <https://www.regulations.gov>, or via email to arra.sarah@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed

from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

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SUPPLEMENTARY INFORMATION: This supplementary information

section is arranged as follows:

- I. Why was Michigan required to submit an SO₂ plan for the Detroit area?
- II. Requirements for SO₂ Nonattainment Area Plans.
- III. Review of Michigan's Attainment Plan.
- IV. Review of Other Plan Requirements.
 - A. RACM/RACT
 - B. Reasonable Further Progress (RFP)
 - C. Contingency Measures
- V. What action is EPA taking?
- VI. Incorporation by Reference.
- VII. Statutory and Executive Order Reviews.

I. Why was Michigan required to submit an SO₂ plan for the Detroit area?

On June 22, 2010, EPA published a new 1-hour primary SO₂ NAAQS of 75 parts per billion (ppb), which is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations does not exceed 75 ppb, as determined in accordance with appendix T of 40 CFR part 50. See 75 FR 35520, codified at 40 CFR 50.17(a)-(b). On August 5, 2013, EPA designated 29 areas of the country as nonattainment for the 2010 SO₂ NAAQS, including the Detroit area within the State of Michigan. See 78 FR 47191, codified at 40 CFR part 81, subpart C. These area designations became effective on October 4, 2013. Section 191 of the Clean Air Act (CAA) directs states to submit SIPs for areas designated as nonattainment for the SO₂ NAAQS to EPA within 18 months of the effective date of the designation, *i.e.*, by no later than April 4, 2015, in this case. These SIPs were required to demonstrate that their respective areas will attain the NAAQS as expeditiously as practicable, but

no later than 5 years from the effective date of designation, which was October 4, 2018.

For a number of nonattainment areas, including the Detroit area, EPA published an action on March 18, 2016 (effective April 18, 2016), finding that Michigan and other pertinent states had failed to submit the required SO₂ nonattainment plan by the submittal deadline (81 FR 14736). Michigan submitted an attainment plan for the Detroit SO₂ area on May 31, 2016, and submitted associated final enforceable measures on June 30, 2016. As part of its 2016 plan, Michigan imposed emission limits for U.S. Steel it concluded were necessary to bring the Detroit area into attainment via Michigan Administrative Code (MAC) 336.1430 ("Rule 430"). Michigan submitted Rule 430 to EPA as an enforceable limitation element for approval as part of its SO₂ plan. Subsequently, U.S. Steel challenged Rule 430 under state law in the Michigan Court of Claims. The decision invalidated Rule 430 on October 4, 2017. *United States Steel Corp. v. Dept. of Environmental Quality*, No. 16-000202-MZ, 2017 WL 5974195 (Mich. Ct. Cl. Oct. 4, 2017). Because the State's submitted attainment demonstration relied on a limitation that had become unenforceable and, therefore, could not meet the requirements of CAA sections 110 and 172, EPA could not fully approve Michigan's 2016 plan.

On March 19, 2021, EPA partially approved and partially disapproved Michigan's SO₂ plan as submitted in 2016 (86 FR 14827) (effective April 19, 2021). EPA approved the base-year

emissions inventory and affirmed that the new source review (NSR) requirements for the area had previously been met on December 16, 2013 (78 FR 76064). EPA also approved the enforceable control measures for two facilities as SIP strengthening. At that time, EPA disapproved the attainment demonstration, as well as the requirements for meeting reasonable further progress (RFP) toward attainment of the NAAQS, reasonably available control measures and reasonably available control technology (RACT/RACM), and contingency measures. Additionally, EPA disapproved the plan's control measures for two facilities as not demonstrating attainment. EPA's March 19, 2021, partial disapproval started a sanctions clock which is permanently stopped only by meeting the conditions of EPA's regulations at 40 CFR 52.31(d).

On October 12, 2022, EPA promulgated a Federal Implementation Plan (FIP) for the Detroit SO₂ nonattainment area (87 FR 61514), which satisfied EPA's duty to promulgate a FIP for the area under CAA section 110(c) that resulted from the previous finding of failure to submit. However, it did not affect the sanctions clock started under CAA section 179 resulting from EPA's partial disapproval of the prior SIP, which would be permanently stopped only by meeting the conditions of EPA's regulations at 40 CFR 52.31(d)(5).

While EPA's FIP for the Detroit area meets the requirements for SO₂ nonattainment area plans, the FIP does not relieve Michigan of the requirement under Section 191 of the CAA to

submit a plan that provides for attainment of the SO₂ NAAQS for the Detroit nonattainment area. On December 20, 2022, Michigan submitted a revised attainment plan for the Detroit SO₂ nonattainment area mirroring EPA's FIP in order to remedy Michigan's 2016 plan deficiencies specified in EPA's March 19, 2021 rulemaking. Michigan's December 20, 2022, plan depends, in part, on permits that have not yet been issued but will include limits and associated requirements for the U.S. Steel and Dearborn Industrial Generation (DIG) facilities that are no less stringent than those set forth in EPA's FIP, codified at 40 CFR 52.1189.

Under section 110(k)(4) of the CAA, EPA may conditionally approve a plan based on a commitment from the State to adopt specific enforceable measures within one year from the date of approval. EPA's October 28, 1992, memorandum, entitled "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines," states that such commitments should include a formal request that EPA approve the commitment, be subject to public hearing pursuant of 40 CFR 51.102, and include a schedule for the adoption of the required measures. Therefore, Michigan included in its December 20, 2022, submittal, which was subject to public hearing, a request that EPA conditionally approve its revised plan for the Detroit area, conditional upon the issuance and submission for incorporation into the SIP of the NSR permits for the U.S. Steel and DIG facilities, as well as a commitment to submit the permits to EPA

within one year of a conditional approval. On February 21, 2023, Michigan submitted a letter clarifying the schedule for the conditional approval, including Michigan's commitment to submit the necessary permits by April 30, 2024, and the schedule Michigan expects to follow to meet that commitment. Michigan's expected schedule includes ensuring all necessary permit applications are submitted by March 31, 2023, beginning the 240-day permit review process by April 1, 2023, issuing permits by December 1, 2023, and submitting permits to EPA by December 31, 2023. Michigan's expected date of submittal provides some cushion to ensure the State is able to meet its commitment to submit the permits by April 30, 2024, and EPA finds that Michigan's schedule is reasonable.

If EPA finalizes this conditional approval, the State must meet its commitment to submit the necessary permits by April 30, 2024. If the State fails to do so, the action will become a disapproval. In such case, EPA will notify the State by letter of the disapproval and subsequently publish a document in the *Federal Register* notifying the public that the conditional approval automatically converted to a disapproval.

If the State meets its commitment within the applicable time frame, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new submittal. If EPA disapproves the new submittal, Michigan's conditionally approved Detroit SO₂ plan will also be disapproved at that time. If EPA approves the

submittal, Michigan's Detroit SO₂ plan will be fully approved in its entirety and replace the conditionally approved element in the SIP.

Under 40 CFR 52.31(d)(2)(ii), if the State has submitted a revised plan to correct the deficiency, and EPA proposes to conditionally approve the plan and issues an interim final determination that the revised plan corrects the deficiency, application of the new source offset sanction shall be stayed and application of the highway sanction shall be deferred. However, if the State does not meet its commitment and the plan is disapproved, the new source offset sanction shall reapply and the highway sanction shall apply on the date of proposed or final disapproval. In the Detroit SO₂ nonattainment area, the two-to-one new source offset sanction took effect on October 19, 2022 (18 months following the effective date of March 19, 2021, rulemaking that triggered the sanctions clock), and the highway funding sanction was scheduled to take effect on April 19, 2023 (6 months after the date of the offset sanctions), as the result of the March 19, 2021, partial disapproval.

The remainder of this action describes the requirements that SO₂ nonattainment plans must meet in order to obtain EPA approval, provides a review of Michigan's revised plan with respect to these requirements, and describes EPA's proposed conditional approval of the plan.

II. Requirements for SO₂ Nonattainment Area Plans.

Nonattainment SIPs must meet the applicable requirements of the CAA, and specifically CAA sections 110, 172, 191 and 192. EPA's regulations governing nonattainment SIPs are set forth at 40 CFR part 51, with specific procedural requirements and control strategy requirements residing at subparts F and G, respectively. Soon after Congress enacted the 1990 Amendments to the CAA, EPA issued comprehensive guidance on SIPs, in a document entitled the "General Preamble for the Implementation of Title I of the CAA Amendments of 1990," published at 57 FR 13498 (April 16, 1992) (General Preamble). Among other things, the General Preamble addressed SO₂ SIPs and fundamental principles for SIP control strategies. *Id.*, at 13545-49, 13567-68. On April 23, 2014, EPA issued recommended guidance for meeting the statutory requirements in SO₂ SIPs, in a document entitled, "Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions," available at https://www.epa.gov/sites/production/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf. In this guidance EPA described the statutory requirements for a complete nonattainment area SIP, which includes: An accurate emissions inventory of current emissions for all sources of SO₂ within the nonattainment area; an attainment demonstration; demonstration of RFP; implementation of RACM (including RACT); NSR; emissions limitations and control measures as necessary to attain the NAAQS; and adequate contingency measures for the affected area. EPA already concluded in its March 19, 2021,

rulemaking that Michigan has met the emissions inventory and NSR requirements.

In order for EPA to approve a SIP as meeting the requirements of CAA sections 110, 172 and 191-192 and EPA's regulations at 40 CFR part 51, the SIP for the affected area needs to demonstrate to EPA's satisfaction that each of the aforementioned requirements have been met. Under CAA sections 110(1) and 193, EPA may not approve a SIP that would interfere with any applicable requirement concerning NAAQS attainment and RFP, or any other applicable requirement, and no requirement in effect (or required to be adopted by an order, settlement, agreement, or plan in effect before November 15, 1990) in any area which is a nonattainment area for any air pollutant, may be modified in any manner unless it ensures equivalent or greater emission reductions of such air pollutant.

CAA section 172(c)(1) directs states with areas designated as nonattainment to demonstrate that the submitted plan provides for attainment of the NAAQS. 40 CFR part 51, subpart G, further delineates the control strategy requirements that SIPs must meet, and EPA has long required that all SIPs and control strategies reflect four fundamental principles of quantification, enforceability, replicability, and accountability. General Preamble at 13567-68. SO₂ attainment plans must consist of two components: (1) Emission limits and other control measures that ensure implementation of permanent, enforceable and necessary emission controls, and (2) a modeling

analysis which meets the requirements of 40 CFR part 51, appendix W, which demonstrates that these emission limits and control measures provide for timely attainment of the primary SO₂ NAAQS as expeditiously as practicable, but by no later than the attainment date for the affected area. In all cases, the emission limits and control measures must be accompanied by appropriate methods and conditions to determine compliance with the respective emission limits and control measures and must be quantifiable (*i.e.*, a specific amount of emission reduction can be ascribed to the measures), fully enforceable (specifying clear, unambiguous and measurable requirements for which compliance can be practicably determined), replicable (the procedures for determining compliance are sufficiently specific and non-subjective so that two independent entities applying the procedures would obtain the same result), and accountable (source specific limits must be permanent and must reflect the assumptions used in the SIP demonstrations).

Preferred air quality models for use in regulatory applications are described in appendix A of EPA's *Guideline on Air Quality Models* (40 CFR part 51, appendix W). In 2005, EPA promulgated AERMOD as the Agency's preferred near-field dispersion modeling for a wide range of regulatory applications addressing stationary sources (for example in estimating SO₂ concentrations) in all types of terrain based on extensive developmental and performance evaluation. Supplemental guidance on modeling for purposes of demonstrating attainment of the SO₂

standard is provided in appendix A to the April 23, 2014, SO₂ nonattainment area SIP guidance document referenced above. Appendix A provides extensive guidance on the modeling domain, the source inputs, assorted types of meteorological data, and background concentrations. Consistency with the recommendations in this guidance is generally necessary for the attainment demonstration to offer adequately reliable assurance that the plan provides for attainment.

As stated previously, attainment demonstrations for the 2010 1-hour primary SO₂ NAAQS must demonstrate future attainment and maintenance of the NAAQS in the entire area designated as nonattainment (*i.e.*, not just at the violating monitor). This is demonstrated by using air quality dispersion modeling (see appendix W to 40 CFR part 51) that shows that the mix of sources, enforceable control measures, and emission rates in an identified area will not lead to a violation of the SO₂ NAAQS. For a short-term (*i.e.*, 1-hour) standard, EPA believes that dispersion modeling, using allowable emissions and addressing stationary sources in the affected area (and in some cases those sources located outside the nonattainment area which may affect attainment in the area) is technically appropriate, efficient and effective in demonstrating attainment in nonattainment areas because it takes into consideration combinations of meteorological and emission source operating conditions that may contribute to peak ground-level concentrations of SO₂.

The meteorological data used in the analysis should generally be processed with the most recent version of AERMET. Estimated concentrations should include ambient background concentrations, should follow the form of the standard, and should be calculated as described in section 2.6.1.2 of the August 23, 2010, clarification memo on "Applicability of Appendix W Modeling Guidance for the 1-hr SO₂ National Ambient Air Quality Standard" (U.S. EPA, 2010).

For a more in-depth discussion on the requirements of SO₂ nonattainment plans, including the use of longer-term average limits, see EPA's proposed FIP (87 FR 33095).

III. Review of Michigan's Attainment Plan.

Michigan's plan for the Detroit nonattainment area mirrors EPA's promulgated FIP for the area. Therefore, Michigan's plan relies on the modeling analysis EPA used to support its FIP, which is attached as appendix B of Michigan's December 20, 2022, submittal, to demonstrate attainment of the 2010 SO₂ NAAQS in the Detroit area. A more in-depth discussion of the modeling analysis may be found in EPA's proposed FIP (87 FR 33095) and the associated technical support document, which is included in the docket for this action as appendix B of Michigan's December 20, 2022, submittal.

An important aspect of an attainment plan is that the emission limits that provide for attainment be quantifiable, fully enforceable, replicable, and accountable. See General Preamble at 13567-68. Michigan's attainment plan includes the

same limits for the U.S. Steel, EES Coke, Cleveland-Cliffs Steel Corporation, DIG, Carmeuse Lime, and DTE Trenton Channel facilities that are included in EPA's FIP, and which are all shown below in Table 1. The plan also includes the same requirement that a 170-foot stack be constructed at U.S. Steel Boilerhouse 2 by November 14, 2024, as set forth in EPA's FIP. The FIP made all of these limits and requirements federally enforceable, via either incorporation of permits containing the limits and requirements into Michigan's SIP or inclusion in the FIP regulatory language, codified at 40 CFR 52.1189. As Michigan's plan cannot rely on the FIP regulatory language, the enforceability mechanisms of all the limits relied upon by Michigan's plan are described in the remainder of this section.

In preparing its 2016 plan, Michigan adopted Permit to Install 193-14A, governing the Carmeuse Lime SO₂ emissions, and Permit to Install 125-11C, governing the DTE Trenton Channel SO₂ emissions. These construction permit revisions were adopted by Michigan following established, appropriate public review procedures. The permit compliance dates were October 1, 2018 for Carmeuse Lime and January 1, 2017 for DTE Trenton Channel. Both of these permits were incorporated into Michigan's SIP as part of EPA's March 19, 2021, action partially approving and partially disapproving Michigan's SO₂ plan (86 FR 14827). DTE Trenton Channel has since permanently shut down as of June 19, 2022, under court order.¹ However, the DTE Trenton Channel

¹ See https://earthjustice.org/sites/default/files/files/267-1_-_sierra_club_-_dte_separate_agreement.pdf

permitted limit was included in the FIP analysis and included in Michigan's revised plan as a precautionary measure. The Carmeuse Lime and DTE Trenton Channel permits were incorporated into Michigan's SIP as part of EPA's March 19, 2021, action, so EPA is not proposing to re-incorporate them into 40 CFR part 52 in this action.

Emission limits and associated requirements for EES Coke and Cleveland-Cliffs Steel Corporation are contained in permits Permit to Install 51-08C, effective November 21, 2014, and Permit MI-ROP-A8640-2016a, modified January 19, 2017, respectively. These limits and associated monitoring requirements were also included in EPA's FIP, codified at 40 CFR 52.1189. The permit revisions were adopted by Michigan following established, appropriate public review procedures. EPA finds that these permit revisions provide for permanent enforceability and is proposing to incorporate these permits into Michigan's SIP in this action.

Michigan has committed to issue permits for the emission limits and associated construction, monitoring, recordkeeping, and reporting requirements for the U.S. Steel and DIG units, including the construction of a new 170-foot stack for U.S. Steel Boilerhouse 2 by November 14, 2024, that are no less stringent than those specified in 40 CFR 52.1189. These enforceable requirements will be contained in permits or permit revisions that have not yet been issued, but that Michigan has committed to submit to EPA by April 30, 2024. While EPA cannot

incorporate permits containing emission limits for the U.S. Steel and DIG unit limits into Michigan's SIP at this time, these limits were previously adopted into EPA's FIP and will continue to remain federally enforceable as part of the regulatory text of EPA's FIP, codified at 40 CFR 52.1189. Therefore, EPA is proposing to conditionally approve Michigan's plan, pending the issuance and timely submission of the appropriate permits to EPA for incorporation into the SIP.

Table 1 - Emission Limits Included in Michigan's Detroit SO₂ Nonattainment Area Plan

Unit	SO ₂ Emission Limit (lb/hr)	Permit Number or Status	SIP Status
U.S. Steel - Zug Island			
Boilerhouse 1 (all stacks combined)	55.00	Permit issuance in progress.	If this action is finalized, approval of Michigan's plan will be conditional upon the timely submission of these permits for incorporation into the SIP.
A1 Blast Furnace	0.00		
B2 Blast Furnace	40.18		
D4 Blast Furnace	40.18		
A/B Blas Furnace Flares	60.19		
D Furnace Flare	60.19		
Boilerhouse 2	750.00/81.00*	Permit issuance in progress.	
U.S. Steel - Ecorse			
Hot Strip Mill - Slab Reheat Furnace 1	0.31	Permit issuance in progress.	If this action is finalized, approval of Michigan's plan will be conditional upon the timely submission of this permit for incorporation into the SIP.
Hot Strip Mill - Slab Reheat Furnace 2	0.31		
Hot Strip Mill - Slab Reheat Furnace 3	0.31		
Hot Strip Mill - Slab Reheat Furnace 4	0.31		
Hot Strip Mill - Slab Reheat Furnace 5	0.31		
No. 2 Baghouse	3.30		
Main Plant Boiler No. 8	0.07		
Main Plant Boiler No. 9	0.07		
EES Coke			
Combustion Stack	544.6	Permit to Install 51-08C	EPA is proposing to incorporate this permit into Michigan's SIP.

DTE Trenton Channel**			
Trenton Channel Unit 9	5,907	Permit to Install 125-11C	Incorporated into Michigan’s SIP as part of March 19, 2021 action (86 FR 14827). However, the source has since shut down.
Carmeuse Lime			
Carmeuse Lime Stack	470	Permit to Install 193-14A	Incorporated into Michigan’s SIP as part of March 19, 2021 action (86 FR 14827).
Cleveland-Cliffs Steel Corporation**			
Furnace B Baghouse Stack	71.9	Permit MI-ROP-A8640-2016a	EPA is proposing to incorporate this permit into Michigan’s SIP.
Furnace B Stove Stack	38.75		
Furnace B Baghouse and Stove Stacks (combined)	77.8		
Furnace C Baghouse Stack	179.65		
Furnace C Stove Stack	193.6		
Furnace C Baghouse and Stove Stacks (combined)	271.4		
DIG**			
Boilers 1,2, and 3 (combined)	420	Permit issuance in progress.	If this action is finalized, approval of Michigan’s plan will be conditional upon the timely submission of this permit for incorporation into the SIP.
Boilers 1, 2, and 3 and Flares 1 and 2 (combined)	840		

* U.S. Steel - Zug Island Boilerhouse 2 shall emit less than 750.00 lbs/hr unless Boilerhouse 1, A1 Blast Furnace, B2 Blast Furnace, D4 Blast Furnace, A/B Blast Furnace Flares, or D Furnace Flare is operating, in which case it shall emit less than 81.00 lbs/hr. In addition to the limit, this permit will also require a new 170-foot stack to be constructed for Boilerhouse 2 by November 14, 2024.

** The limit for Trenton Channel is expressed as a 30-day average limit, and the limits for Cleveland-Cliffs Steel Corporation and DIG are expressed as daily average limits. EPA's FIP proposal addresses the use of these longer-term average limits, both with respect to the general suitability of using such limits for demonstrating attainment and with respect to whether the particular limits included in the plan have been suitably demonstrated to provide for attainment.

If this action is finalized and Michigan fails to submit the permits containing the necessary requirements for the U.S. Steel and DIG units, the action will become a disapproval one

year from the date of final conditional approval. If EPA disapproves the new submittal, Michigan's conditionally approved Detroit SO₂ plan will also be disapproved at that time. Additionally, the new source offset sanction shall reapply and the highway sanction shall apply on the date of proposed or final disapproval.

Michigan commits to issue permits that contain requirements that are no less stringent than EPA's FIP, codified at 40 CFR 52.1189. Because Michigan's commitment relies on the same modeling analysis that supports EPA's FIP and will contain emission limits and associated requirements that are no less stringent than EPA's FIP, EPA is proposing to conditionally approve Michigan's plan, conditional upon the timely submission of permits containing the necessary SO₂ emission limits and associated requirements for the U.S. Steel and DIG units.

IV. Review of Other Plan Requirements.

A. RACM/RACT

CAA section 172(c)(1) states that nonattainment plans shall provide for the implementation of all RACM as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of RACT) and shall provide for attainment of the NAAQS. For most criteria pollutants, RACT is control technology as needed to meet the NAAQS that is reasonably available considering technological and economic feasibility. However, the definition of RACT for SO₂ is, simply,

that control technology which is necessary to achieve the NAAQS (see 40 CFR 51.100(o)). CAA section 172(c)(6) requires plans to include enforceable emissions limitations, and such other control measures as may be necessary or appropriate to provide for attainment of the NAAQS.

In its March 19, 2021, rulemaking, EPA disapproved Michigan's 2016 attainment plan because it relied on Rule 430, which was invalidated and so was no longer an enforceable mechanism. Therefore, the plan could not be considered to provide an appropriate attainment demonstration, and it did not demonstrate RACM/RACT or meet the requirement for necessary emissions limitations or control measures.

EPA's FIP for attaining the 1-hour SO₂ NAAQS in the Detroit area is based on a variety of measures, including permits for Carmeuse Lime (effective date of October 1, 2018) and DTE Trenton Channel (effective date of January 1, 2017) that have been incorporated into Michigan's SIP, as well as the FIP regulatory language, codified at 40 CFR 52.1189, regarding U.S. Steel, EES Coke, Cleveland-Cliffs Steel Corporation, and DIG emissions. The FIP requires compliance by November 14, 2024, for U.S. Steel Boilerhouse 2 and November 14, 2022, for all other units. The compliance schedule for U.S. Steel Boilerhouse 2 allows time for the owner or operator to submit a construction permit application to the State of Michigan (required by February 12, 2023), as well as time for the State of Michigan to issue the permit, the owner or operator to send out requests for

proposal and award a construction contract and procure materials, and for completion of construction. Since Michigan's plan follows the same compliance schedule by requiring compliance on the same dates as the FIP, EPA proposes to determine that these measures suffice to provide for attainment and proposes to conclude that the Michigan's plan satisfies the requirement in sections 172(c)(1) and (6) to adopt and submit all RACM/RACT and emissions limitations or control measures as needed to attain the standards as expeditiously as practicable.

B. Reasonable Further Progress (RFP)

Section 171(1) of the CAA defines RFP as such annual incremental reductions in emissions of the relevant air pollutant as are required by part D or may reasonably be required by EPA for the purpose of ensuring attainment of the applicable NAAQS by the applicable attainment date. This definition is most appropriate for pollutants that are emitted by numerous and diverse sources, where the relationship between any individual source and the overall air quality is not explicitly quantified, and where the emission reductions necessary to attain the NAAQS are inventory-wide. (See EPA's April 2014 SO₂ nonattainment planning guidance, page 40.) For SO₂, there is usually a single "step" between pre-control nonattainment and post-control attainment. Therefore, for SO₂, with its discernible relationship between emissions and air quality, and significant and immediate air quality improvements, RFP is best construed as adherence to an ambitious compliance

schedule. (See General Preamble at 74 FR 13547 (April 16, 1992)).

In its March 19, 2021, rulemaking, EPA concluded that Michigan had not satisfied the requirement in section 172(c)(2) to provide for RFP toward attainment. Michigan's 2016 attainment plan did not demonstrate that the implementation of the control measures required under the plan were sufficient to provide for attainment of the NAAQS in the Detroit SO₂ nonattainment area, as some control measures were not enforceable due to the invalidation of Rule 430. Therefore, a compliance schedule to implement those controls was not sufficient to provide for RFP. EPA's FIP requires compliance by November 14, 2024, for U.S. Steel Boilerhouse 2 and November 14, 2022, for all other units. As described in section V.B above, the 2-year compliance schedule for U.S. Steel Boilerhouse 2 allows 90 days for the owner or operator to submit a construction permit application to the State of Michigan, as well as time for the State of Michigan to issue the permit, the owner or operator to send out requests for proposal and award a construction contract and procure materials, and for completion of construction. For DTE Trenton Channel and Carmeuse lime, compliance was required by January 1, 2017, and October 1, 2018, respectively. EPA concluded in the FIP that this is an ambitious compliance schedule, as that term is used in the April 2014 guidance for SO₂ nonattainment plans. As Michigan's plan follows the same compliance schedule as the FIP, EPA concludes

that this plan therefore provides for RFP in accordance with the approach to RFP described in EPA's 2014 guidance.

C. Contingency Measures

EPA guidance describes special features of SO₂ planning that influence the suitability of alternative means of addressing the requirement in section 172(c)(9) for contingency measures for SO₂, such that in particular an appropriate means of satisfying this requirement is for the air agency to have a comprehensive enforcement program that identifies sources of violations of the SO₂ NAAQS and to undertake an aggressive follow-up for compliance and enforcement. (See EPA's April 2014 SO₂ nonattainment planning guidance, page 41.) Michigan has such an enforcement program, pursuant to section 5526 of part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, Michigan Compiled Laws 324.5526. Michigan enforcement and compliance authority is furthered by the State's title V program, which includes a compliance monitoring program, periodic inspections, review of company monitoring records, reporting, and issuance of violation notices for all violations shown from inspections or data. In addition, Michigan stated that it responds promptly to citizen complaints, reports all high priority violations to EPA, and puts all inspection reports and violation notices on Michigan's website. Therefore, EPA proposes that Michigan's plan satisfies the contingency measure requirement in accordance with the approach to contingency measures described in EPA's 2014 guidance.

V. What action is EPA taking?

EPA is proposing to conditionally approve Michigan's revised SIP submission, which the State submitted to EPA on December 20, 2022, for attaining the 2010 1-hour SO₂ NAAQS for the Detroit area and for meeting other nonattainment area planning requirements, pending the timely submission of permits containing emission limits for the U.S. Steel and DIG facilities. This SO₂ attainment plan includes Michigan's attainment demonstration for the Detroit area. The plan also addresses requirements for RFP, RACT/RACM, and contingency measures. EPA previously concluded that Michigan has addressed the requirements for emissions inventories for the Detroit area and nonattainment area NSR. EPA has determined that Michigan's Detroit SO₂ plan meets applicable requirements of section 172 of the CAA, conditioned upon the timely submission of the appropriate permits.

Michigan's Detroit SO₂ plan is based on the Carmeuse Lime emission limits specified in Permit to Install 193-14A, the DTE Trenton Channel emission limits specified in Permit to Install 125-11C, the EES Coke limits specified in Permit to Install 51-08C, Cleveland-Cliffs Steel Corporation emission limits specified in Permit MI-ROP-A8640-2016a, and U.S. Steel and DIG limits that will be included in permits that Michigan has committed to submit for incorporation into Michigan's SIP by April 30, 2024. Regardless of whether these permits are incorporated into Michigan's SIP, the U.S. Steel and DIG limits

will remain federally enforceable in EPA's FIP, codified at 40 CFR 52.1189, until further action. The Carmeuse Lime and DTE Trenton Channel permits have already been incorporated into Michigan's SIP and EPA is not proposing to re-incorporate them into 40 CFR part 52 here. EPA is proposing to incorporate Permit to Install 51-08C, governing EES Coke SO₂ emissions and Permit MI-ROP-A8640-2016a, governing Cleveland-Cliffs Steel Corporation SO₂ emissions into Michigan's SIP in this action.

If EPA finalizes this conditional approval, the State must meet its commitment to submit the necessary permits by April 30, 2024. If the State fails to do so, the action will become a disapproval one year from the date of final conditional approval. In such case, EPA will notify the State by letter of the disapproval and subsequently publish a document in the *Federal Register* notifying the public that the conditional approval automatically converted to a disapproval.

If the State meets its commitment within the applicable time frame, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new permits. If EPA disapproves the new submittal, Michigan's conditionally approved Detroit SO₂ plan will also be disapproved at that time. If EPA approves the submittal, Michigan's Detroit SO₂ plan will be approved in its entirety and replace the conditionally approved element in the SIP.

Under 40 CFR 52.31(d)(2)(ii), if the State has submitted a revised plan to correct the deficiency, and EPA proposes to conditionally approve the plan and issues an interim final determination that the revised plan corrects the deficiency, application of the new source offset sanction shall be stayed and application of the highway sanction shall be deferred. However, if the State does not meet its commitment and the plan is disapproved, the new source offset sanction shall reapply and the highway sanction shall apply on the date of proposed or final disapproval. In the Detroit area, the offset sanction was imposed on October 19, 2022, and the highway sanction, if not deferred, would be imposed on April 19, 2022.

EPA is taking public comments for thirty days following the publication of this proposed action in the *Federal Register*. EPA will take all comments into consideration in the final action.

VI. Incorporation by Reference.

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Permit to Install 51-08C, effective November 21, 2014, governing EES Coke SO₂ emissions and Permit MI-ROP-A8640-2016a, modified January 19, 2017, governing Cleveland-Cliffs Steel Corporation SO₂ emissions, as discussed in Section III of this preamble. EPA has made, and will continue to make, these documents generally available through

www.regulations.gov and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VII. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as "the fair treatment and meaningful

involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies."

The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of EO 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations,
Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 16, 2023.

Debra Shore,
Regional Administrator, Region 5.

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